Uda Holdings Bhd v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur

HIGH COURT (KUALA LUMPUR) — SUIT NO 25NCVC-14–04 OF 2012
PRASAD ABRAHAM J
6 JULY 2012

Land Law — Acquisition of land — Objection against award — Landowner present when Land Administrator ('LA') made compensation award — Whether objector had to serve Form N on LA within six weeks from date of LA's award — Whether wrong for landowner to have waited until receipt of Form H before making objection — Whether special circumstances existed for objector to be granted extension of time to file Form N

Following the gazetting of the requisite notices under the Land Acquisition Act 1960 ('the Act') for the acquisition of the applicant's land, the respondent held an enquiry to determine the compensation payable for the acquisition. After several days of hearings, the respondent made his compensation award in the presence of the applicant. Two months thereafter the applicant received from the respondent the Form H (notice of Award and Offer of Compensation) under s 16 of the Act. On the same day that it received the Form H the applicant sent to the respondent, among other things, requisite copies of Form N (application that an objection be referred to the court) pursuant to s 38(1) of the Act. The respondent returned the Form N to the applicant stating that it was out of time to file the same under s 38(3)(a) of the Act. The applicant applied to the High Court to (i) direct the respondent to receive the Form N and deem that the service of it on the respondent was made within the prescribed time or (ii) alternatively, allow the applicant extension of time under s 38(4) of the Act to serve the Form N on the respondent. Section 38(3)(a) of the Act required a person objecting to an award and who was present or represented before the Land Administrator ('LA') at the time he made his award, to serve Form N within six weeks from the date of the LA's award under s 14 of the Act. In other cases, the Form N was to be filed either within six weeks of receipt of the LA's notice under s 16 or within six months from the date of the LA's award under s 14, whichever period expired first. With regard to extension of time, s 38(4) of the Act provided that the time periods prescribed for the filing of the Form N could only be enlarged in 'such special circumstances' as the court thought fit.

Held, allowing the applicant extension of time to serve the Form N with no order as to costs:

(1) As the applicant was present when the respondent made his award, the

period to file the objection ran for six weeks from the date the award was made and therefore the applicant was out of time in filing the Form N (see paras 11 & 14).

(2) Section 38(3)(a) of the Act made no reference at all to s 16 of the Act. Had the applicant not been present at the enquiry (at the time the award was made) then the argument that the six weeks ran from receipt of Form H would be tenable (see para 12).

(3) Having read the affidavits of the applicant the court was of the view there existed special circumstances for the court to exercise its discretion to extend the time for the Form N to be filed. The authorities were not in sync as to the proper approach to be taken by the applicant and it could not be faulted for taking the position that time started to run from service of the Form H. The applicant's conduct also suggested that it took reasonable steps to redress the problem it faced (see para 21).

[Bahasa Malaysia summary

Berikutan pewartaan notis-notis yang diperlukan di bawah Akta Pengambilan Tanah 1960 ('Akta') untuk pengambilalihan tanah pemohon, responden mengadakan siasatan untuk menentukan pampasan yang boleh dibayar kepada pengambilalihan tanah tersebut. Selepas beberapa hari pendengaran, responden membuat award pampasannya dalam kehadiran pemohon. Dua bulan kemudiannya pemohon menerima daripada responden Borang H (notis award dan tawaran pampasan) di bawah s 16 Akta. Pada hari yang sama ia menerima Borang H pemohon menghantar kepada responden, antara lain, salinan-salinan Borang N yang diperlukan (permohonan bahawa bantahan dirujuk ke mahkamah) berikutan s 38(1) Akta. Responden memulangkan Borang N kepada pemohon menyatakan bahawa ia adalah di luar masa untuk memfailkannya di bawah s 38(3)(a) Akta. Pemohon memohon kepada Mahkamah Tinggi untuk (i) mengarahkan responden menerima Borang N dan menganggap penyerahannya ke atas responden di buat dalam masa yang ditetapkan atau (ii) secara alternatif, membenarkan pelanjutan masa pemohon di bawah s 38(4) Akta untuk menyerahkan Borang N ke atas responden. Seksyen 38(3)(a) Akta memerlukan orang yang membantah award tersebut atau orang yang hadir atau diwakili di hadapan Pentadbir Tanah ('PT') pada masa beliau membuat awardnya, menyerahkan Borang N dalam masa enam minggu dari tarikh award PT di bawah s 14 Akta. Dalam kes lain, Borang N dikehendakki difailkan sama ada enam minggu selepas penerimaan notis PT di bawah s 16 atau dalam masa enam bulan dari tarikh award PT di bawah s 14, mana-mana tempoh yang tamat dahulu. Berkaitan pelanjutan masa, s 38(4) Akta memperuntukkan bahawa tempoh masa yang ditetapkan untuk pemfailan Borang N hanya boleh dilanjutnya dalam 'such special circumstances' seperti yang mana mahkamah fikirkan wajar.

Diputuskan, membenarkan pelanjutan masa pemohon untuk menyerahkan Borang N tanpa perintah kepada kos:

(1) Memandangkan pemohon hadir semasa responden membuat awardnya, tempoh untuk memfailkan bantahan berjalan untuk enam minggu dari tarikh award dibuat dan oleh itu pemohon telah melampaui masa dalam memfailkan Borang N (lihat perenggan 11 & 14).

(2) Seksyen 38(3)(a) Akta langsung tidak membuat rujukan kepada s 16 Akta. Jika pemohon tidak hadir semasa siasatan (pada masa award dibuat) dengan itu hujahan bahawa enam minggu berjalan dari penerimaan Borang H akan dapat dipertahankan (lihat perenggan 12).

(3) Setelah membaca afidavit-afidavit pemohon mahkamah berpendapat terdapat keadaan khas untuk mahkamah menjalankan budi bicaranya untuk melanjutkan masa untuk Borang N difailkan. Autoriti-autoriti tidak selari mengenai pendekatan betul yang diambil oleh pemohon dan ia tidak boleh disalahkan kerana menegaskan bahawa masa mula berjalan semenjak penyerahan Borang H tersebut. Tingkah laku pemohon juga mencadangkan bahawa ia telah mengambil langkah-langkah munasabah untuk membetulkan masalah yang ia hadapi (lihat perenggan 21).]

Notes

For cases on objection againsts award, see 8(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 2261–2282.

Cases referred to

Boycott, Re (1885) 29 Ch D 571, CA (refd)

Dynamic Plantations Bhd v Pentadbir Tanah Daerah Segamat [2008] 7 MLJ 427, HC (refd)

Lau Cher Hian v Collector of Land Revenue Muar [1971] 1 MLJ 96, FC (refd)

Penang Development Corporation v Collector of Land Revenue Penang & Anor [1976] 1 MLJ 89; [1975] 1 LNS 122 (refd)

Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah, Daerah Rembau Negeri Sembilan [2008] 6 MLJ 763; [2009] 1 CLJ 13 (folld)

Legislation referred to

Land Acquisition Act 1960 ss 4, 8, 10, 13, 14, 14(1), (2), 16, 16(2), 38(1), (2) (3)(a), (b), (4), Forms G, H, N

Nazeera Hanifa (Ghazi & Lim) for the applicant.

Narkunavathy Sundareson (SC Kong with him) (Senior Federal Counsel, Attorney General's Chambers) for the respondent.

Prasad Abraham J:

[1] Enclosure 1 is an application by the applicant by way of motion to direct the respondent to receive Form 'N' pursuant to the Land Acquisition Act 1960 ('the said Act'), which was served on the respondent on 22 December 2001. Such service was to be deemed within the prescribed time or alternatively a prayer for extension of time be granted to the applicant to file the same fourteen days from the date of this order, if granted.

[2] The chronology of events in respect of this matter are set out in the applicant's written submissions and are not really in dispute. I set out the same.

CHRONOLOGY OF EVENTS

11 February 2011	Form A (notice that land is likely to be acquired) under s 4 of the Land Acquisition Act 1960 ('the Act') dated 11 February 2011 has been gazetted on Lot 23, Section 28, Title No PN 27404 (Bangunan Plaza Warisan) Kuala Lumpur ('the lot') for Mass Rapid Transit (MRT) Lembah Klang, Jajaran Sg Buloh-Kajang.
27 June 2011	Form D (declaration of intended acquisition) under s 8 of the Act dated 27 June 2011 has been gazette on the lot.
22 July 2011	The applicant received Form E (intended acquisition: notice of enquiry) under s 10 of the Act dated 21 July 2011 on 22 July 2011 from the respondent where the enquiries have been held on 15 August 2011, 19 September 2011–22 September 2011 and 27 October 2011.
27 October 2011	An award of RM44,345,000 has been made as compensation for the acquisition of the lot. The applicant was present.
12 December 2011	The applicant received Form H (notice of award and offer of compensation) under s 16 of the Act dated 30 November 2011 on 12 December 2011 from the respondent.
12 December 2011	The applicant has sent a letter dated 22 December 2011 encl 1 original copy of Form H, eight original copies of Form N (the applicant that an objection be referred to the court) under s 38 (1) of the Act and a cheque with the sum of RM3,000 as deposit for objection to the respondent.
23 January 2012	The respondent through a letter dated 16 January 2012 returned the applicant's objection documents with the cheque of RM3,000 due to te reason that the application has been caught by the limitation set forth in s 38(3)(a) of the Act. This letter was only received by the applicant on 23 January 2012.

2 February 2012	The applicant had sent a letter dated 2 February 2012 appealing to the respondent for the objection to be referred to the court. Enclosed with the letter is the Form H and a cheque of RM3,000 as deposit for objection. The applicant contended that the objection could not be made without prior receiving a written award from the respondent.
24 February 2012	The respondent through a letter dated 20 February 2012 returned the applicant's objection documents with the cheque of RM3,000 due to the reason that the period of six weeks from the date of the award as provided under s 38(3)(a) of the Act has lapsed. This latter was only received by the applicant on 24 February 2012.

[3] Enclosure 1 is dated 20 April 2012.

THE FIRST ISSUE

[4] The respondent takes the view that s 38(3)(a) of the Land Acquisition Act 1960 requires Form 'N' which is the notice to require the respondent to refer the objection to the award, to court within six weeks from the date of the award being made ie 27 October 2011, and the applicant was out of time. The applicant argues time starts to run from the receipt of the Form 'H' from the respondent ie 12 December 2011 and therefore the applicant was well within time when they lodged Form 'N'.

[5] To deal with the submissions tendered to court by way of written submissions and orally made, it would be prudent for this court to examine the relevant provisions of the said Act.

[6] The respondent after having made on enquiry and concluding it, will prepare a written award under his hand in Form 'G' of the said Act and every such award shall be final. This is clearly set out in ss 14(1) and (2) of the said Act and I now set out the relevant provisions.

14 Award of the Land Administrator

(1) Upon the conclusion of the enquiry under section 12 relating to any scheduled land the Land Administrator shall prepare a written award under his hand in Form G, in which he shall, in respect of each separate area of scheduled land, make a separate award in respect of each person whose interest in the land has been established in such enquiry.

(2) Every award prepared under subsection (1) shall be filed in the office of the Land Administrator and shall be final and conclusive evidence of the area of any scheduled land, of its value in the opinion of the Land

> Administrator, and of the apportionment of the compensation awarded by the Land Administrator, whether the persons interested therein have or have not appeared at the enquiry.

[7] Looking at Form 'G', the form is also headed *written award of compensation*.

[8] The next step is s 16 of the Said Act, which requires Form 'H' to be served on the applicant by the respondent looking at Form 'H', it is headed notice of award and offer of compensation. What is pertinent to note is s 16(2) of the said Act ie Form 'H' will include an extract from the written award of the respondent in Form 'G' referred to aforesaid. Section 16(2) is also set out.

> 16 Service of award
>
> (2) Every notice in Form H shall include an extract from the written award of the Land Administrator in Form G, relating to the land in which the person to whom such notice is addressed has an interest.

[9] It the applicant wished to raise an objection to the award, the applicant would have to serve Form 'N' to the respondent pursuant to s 38(1) and (2) of the said Act. The bone of contention arises out of respective parties interpretation of s 38(3)(a) and (b) of the said Act which I now set out:

> 38 Form and content of application, etc
>
> (3) Every application under subsection (1) shall be made —
>
> (a) if the person making it was present or represented before the Land Administrator *at the time when the Land Administrator made his award, within six weeks from the date of the Land Administrator's award under Section 14;*
>
> (b) *in other cases, within six weeks of the receipt of the notice from the Land Administrator under Section 16 or within six months from the date of the Land Administrator's award under Section 14 whichever period shall first expire.*

[10] The question for the court to adjudicate upon is from when the six weeks time period for serving Form 'N' begins to run. Looking at s 14(1) of the said Act it clearly provides that upon a conclusion of the enquiry held by the respondent the respondent prepares a written award under his hand under Form 'G'.

[11] To my mind Form 'G' is not an offer of compensation but a written

award and is final and conclusive as provided in s 14(2) of the said Act. Section 16 deals with the service of the said *written award* under s 14(1) by issuing of Form 'H'. Section 38(3)(a) of the Act, provides expressedly that as in our case *the applicant was present when the respondent made its award*, the period to file the notice of objection runs within six weeks from the date of the land administrator's award under s 14 of the Act, with regards to filing of the notice of objection to the award Form 'N', s 38(3)(a) of the Act applies and it is to be observed, the said section makes no reference at all to s 16 of the said Act. It is also to be noted that had the applicant not been present at the enquiry then the argument that the six weeks runs from receipt of Form H would tenable but not so in this case.

[12] I am unable to accept submissions of counsel for the applicant that Form 'G' pursuant to s 14(1) of the said Act is merely an offer subject to Form 'H' being issued and served on the applicant. In my view the provisions of the said Act are clear and s 16 relates to the service of the written award of the respondent in Form 'H' and the options that are statutorily options available to the applicant. Section 38(3)(a) of the said Act clearly sets out when the prescribed period the objection is to be filed and is to run from ie from the time the respondent made his award. I find support for my approach in the dictum of His Lordship Zulkefli Ahmad Makinudin FCJ in the decision of the Federal Court in *Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah, Daerah Rembau Negeri Sembilan* reported in; [2008] 6 MLJ 763; [2009] 1 CLJ 13, and particularly at p 766 (MLJ); p 31 (CLJ) of the report para 73 and I quote:

> [73] It is my view that if at all there has been a non-compliance by the respondent of the statutory requirements under the Act in making the award under s 14 of the Act, this issue should be taken up and argued at the hearing of the objection of the appellant in the reference to the High Court under s 36 of the Act. In fact on this point the appellant as an aggrieved party has a recourse to state his case in challenging the award of the respondent at that stage of the proceedings by producing its own private valuation report before the court. But this is not the case before us now. *The true position in the present case is that the appellant had been out of time in filing its application for objection to the award within six weeks from the date of the land administrator's award was made under s 14 of the Act. The appellant in fact has already failed in the first hurdle of satisfying the High Court and the Court of Appeal of the justification to grant enlargement of time to file objection proceedings under Form N.*

[13] I refer also the case of *Dynamic Plantations Bhd v Pentadbir Tanah Daerah Segamat* reported in; [2008] 7 MLJ 427 which forms the pivot of the applicant's submissions. In view of my interpretation of the relevant sections of the said Act I with respect, I am unable to agree with the views expressed by His Lordship in that case.

[14] I therefore rule that in this case where the applicant was present, when

the respondent made his award, the period to file the objection runs from six weeks from the date the award was made and therefore the applicant was out of time in filing of Form 'N' and therefore prayer 1(a) of encl 1 is dismissed.

[15] With regards to prayer 1(b), the application is made pursuant to s 38(4) of the said Act which reads:

> 38 (4) The period of six weeks prescribed by subsection (3) (a) and the periods of six weeks and six months prescribed by subsection (3) (b) shall not be capable of enlargement by any Court, *except in such special circumstances as the Court may think fit.*

[16] There must exist special circumstances for the court to exercise its discretion. The Federal Court in the case of *Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah-Daerah Rembau Port Dickson* reported in ; [2009] 1 CLJ 13 and court p 779 (MLJ); p 15 (CLJ) where per Alauddin Mohd Sherif CJ (Malaya) said:

> (3) Even assuming for a moment that there was non-compliance of the statutory requirements under the Act, in particular paras 1(1)(b)–2(d) of the First Schedule, by the LA while making the award under s 14 of the Act, *it did not result in any serious injustice or prejudice to the appellant.* The difference in the date of valuation ie, from 19 February 2002–11 April 2002, was only 52 days. In that short period, the value of the scheduled land would not have increased significantly. Any prejudice or injustice, if at all, caused to the appellant was the result of its own attitude. Had the appellant remained vigilant in making the application for enlargement of time, it would have had the opportunity to ventilate its case before the High Court. But it chose to remain nonchalant and treated its right with apathy.

[17] The key words used was prejudice accruing to the applicant or injustice I also refer to the decision of the Federal Court in *Lau Cher Hian v Collector of Land Revenue Muar* reported in ; [1971] 1 MLJ 96 where it was held per Ong CJ (Malaya) and I quote:

> When a landowner is to be dispossessed, albeit with compensation, natural justice demands that he should be heard, unless by his own conduct he disentitles himself to such treatment That, I believe, to be the reason why the court is given a discretion to temper the rigidity of the law. 'Special grounds' were not defined and rightly so. Was not hardship a special ground, when the party was not in the least at fault? Except that she did not possess the volume of 1960 legislation for reference was she so much to blame? I do not think that hardship, bona fide mistake or mere 'ignorance of the law' should be left out altogether when considering special grounds.

[18] I also refer to the case of *Penang Development Corporation v Collector of*

Land Revenue Penang & Anor reported in ; [1976] 1 MLJ 89; [1975] 1 LNS 122 and to the judgment of Arulanandom J and I quote:

> Section 38 of the Act stipulates that this time limit shall not be capable of enlargement by any court except in such special circumstances as the court may think fit. Hence there is a discretion given to the court although in a qualified manner and as long as circumstances exist which in the opinion of the court are special, the court can exercise its discretion.

[19] And also I quote further from His Lordship's judgment:

> In *Re Norman* (1886) 16 QBD 673 (CA) Lopes LJ says: The statute uses the words 'special circumstances'. *Those are wide comprehensive and flexible words and I think the legislature intended them to be so and that no Court can or ought to lay down any exhaustive definition of them … It is for the discretion of the judge to say what are special circumstances in a particular case.*

[20] In *Re Boycott* (1885) 29 Ch D 571 (CA) Bowen LJ said:

> Special circumstances I think are those which appear to the judge so special and exceptional as to justify taxation. I think no court has a right to limit the discretion of another court though it may lay down principles which are useful as a guide in the exercise of its own discretion.

[21] To determine whether 'special circumstances exist' the court must be guided by the facts of each case and must weigh the interest of a land owner to being dispossed of their land as opposed to the interest of the acquirer pursuant to the said Act and balance the contradicting interests. Section 38(4) of the said Act, clearly provides a avenue to the court to temper the rigidity of the law and procedure set out in the said Act. The court in deciding whether or not to exercise its discretion should consider on the facts of the case, whether justice requires the court's intervention and each case should be decided on its own facts. Having read the affidavits of the applicant the court is of the view that there exist special circumstances for the court to exercise its discretion to extend the time for Form 'N' to be filed with the respondent. The authorities were not in sync as to the proper approach to be taken by the applicant and the applicant cannot be faulted for taking the position that time starts to run from service of Form H. I also find the conduct of the applicant suggests they took reasonable steps to redress the problem they faced.

[22] The court therefore orders as follows. Order in terms of prayer 1(b) and (d) of encl 1 with no order as to costs.

Applicant extension of time to serve Form N allowed with no order as to costs.

Reported by Ashok Kumar